HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal Nos.410, 412 and 422 of 2007

Writ Appeal No.410 of 2007

Between:

Osmania University, represented by
its Registrar, Hyderabad. …Appellant

And

A. Sreenaiah …Respondent

Counsel for the appellant : Sri Deepak Bhattacharjee

Counsel for the respondent : Sri K. Balagopal

Writ Appeal No.412 of 2007

Between:

Osmania University, represented by
its Registrar, Hyderabad. …Appellant

And

T. Premaiah …Respondent

Counsel for the appellant : Sri Deepak Bhattacharjee

Counsel for the respondent : Sri K. Balagopal

Writ Appeal No.422 of 2007

Between:

Osmania University, represented by
its Registrar, Hyderabad. …Appellant

And

Dr. M. Laxman and two others. …Respondents

Counsel for the appellant : Sri Deepak Bhattacharjee

Counsel for respondent No.1 : Sri K.S. Murthy

Counsel for respondent No.2 : Government Pleader for Higher Education.

:: J U D G M E N T ::

5th June, 2007

Per G.S. Singhvi, C.J.

These appeals are directed against order dated 26-4-2007 passed by the learned Single Judge in W.P.M.P.Nos.10986 and 10886 of 2007 in Writ Petitions No.9458 and 9457 of 2006 and W.V.M.P.No.399 of 2007 in WPMP.No.1503 if 2007 (Writ Petition No.1176 of 2007), whereby he stayed the selection process initiated by the appellant in respect of Group I and III posts.

A perusal of the record shows that in compliance of order dated 27-8-2004 passed by the learned Single Judge in Writ Petition No.8664 of 1998 and batch, the direction given by the Division Bench in Writ Appeal No.244 of 2005, and permission accorded by the Government of Andhra Pradesh, the appellant University issued Advertisement No.1 of 2006, dated 31.3.2006 for recruitment of 163 Assistant Professors. The opening paragraph of the advertisement reads as under:

> "In compliance of direction of Hon'ble High Court in W.P.No.8664 of 1998 and batch, dated 27-8-2004 and direction of Hon'ble Division Bench in W.A. No.244 of 2005 and batch, dated 24-1-2006, permission given to notify the vacancies by Government, the decision taken by the

Executive Council of the University to notify the vacancies, the approval given by the Social Welfare Department confirming the roster points and the final approval given by the Executive Council to notify the vacancies, the following advertisement is released to notify the 163 number of vacancies of Assistant Professors."

The respondents challenged the advertisement by filing separate writ petitions mainly on the ground that the roster points have not been correctly fixed and, on that account, they are being deprived of the right to be considered for appointment in the faculties of their choice. They also filed miscellaneous petitions to restrain the appellant University from finalising the process of selection. By an order dated 2-5-2006 passed in W.P.M.P.No.11956 of 2006 in Writ Petition No.9458 of 2006 – A. Sreenaiah v. Osmania University, the learned Single Judge stayed the recruitment in Technology Unit of Group III. For the sake of convenient reference, that order is reproduced below:

"Prima facie, Advertisement No.1/2006 dated 31-3-2006 calling for applications to fill up certain vacancies in the faculty of the respondent-university, in particular, pertaining to the "Technology Discipline" in Group-III vide Advertisement No.1 of 2006 dated 31-3-2006 appears to be irrational as the exact discipline, whether Chemical Engineering or Textile Technology or even Food Technology is not mentioned and even the requisite qualifications appended to the advertisement notification required a first-class Bachelor' degree or a first-class Master's degree in the appropriate branch of Chemical Engineering/Textile Technology.

The learned Standing Counsel for the respondent was at a loss to even prima facie satisfy this Court that a Bachelor in Textile Technology was competent to instruct students of B. Tech in Chemical Engineering or vice versa.

For the aforesaid reasons, there shall be an interim stay of further proceedings pursuant to Advertisement No.1 of 2006 dated 31-3-2006 of the respondent insofar as the recruitment

to vacancies in the technology unit of Group-III of the respondent-university is concerned."

Thereafter, by an order dated 23-1-2007 passed in W.P.M.P. No.1503 of 2007 in Writ Petition No.1176 of 2007 – Dr. M. Laxman v. Osmania University and others, another learned Single Judge directed the respondents not to fill up one post of Assistant Professor in the Public Administration Department. Two similar orders were passed by the learned Single Judge on 13-2-2007 in W.P.M.P.No.3426 of 2007 in Writ Petition No.2675 of 2007 – Ramagiri Srinivasa Rao v. Osmania University and another, and 22-2-2007 in W.P.M.P.No.34611 of 2006 in Writ Petition No.9457 of 2006 – T.Premaiah v. Osmania University.

It is borne out from the record that on 30-1-2007, the counsel appearing for the University gave an undertaking that all the vacancies in Group I and III shall not filled until further orders and as a result of that, the entire process of selection got stalled. After filing counter affidavits to the writ petitions, the appellant University filed W.P.M.P. Nos.10886 and 10986 of 2007 for withdrawal of the undertaking. It also filed W.V.M.P.No.399 of 2007 for vacating interim order dated 23-1-2007 passed in W.P.M.P.No.1503 of 2007 (Writ Petition No.1176 of 2007).

The learned Single Judge disposed of all the applications by a common order and stayed the selection process in respect of Group - I and III posts. The relevant extracts of that order are reproduced below:

"Heard the learned counsel for the petitioner-University and the learned counsel for the respondent-candidate, and perused the copies of advertisement and the roster points sheet produced by the learned Standing Counsel for the petitioner-University.

The respondent-candidate states that the roster point would start at 83, and though the petitioner-University

contended that the roster point would start at 89, it failed to satisfy how the roster point would start at 89. Though the learned counsel for the petitioner-University contended that if it is not permitted to go ahead with the selection process and making of appointments, the education of the children would suffer, it is submitted by the learned counsel for the respondent-candidate that since the last more than ten years, the petitioner-University is running the University by engaging teaching staff on contract basis, and as such, the question of the education of the children suffering does not arise.

Be that as it may, if the stand taken by the petitioner-University is accepted and it is permitted to go ahead with the process of selection and making of appointments, then third party interests will creep in, and in which event, a chaotic situation will prevail. Therefore, to avoid such a situation, I am of the considered opinion that the writ petition itself should be heard finally.

Therefore, pending final decision on the question involved in the writ petition namely, whether the roster point would start at 83, as contended by the respondent-candidate or 89, as contended by the petitioner-University, I deem it appropriate to pass the following order:

The selection process in respect of Group-I and III posts is stayed till 10-6-2007. However, the petitioner is at liberty to go ahead with the selection process in respect of Group-II."

Sri Deepak Bhattacharjee, learned counsel for the appellant argued that the impugned order is liable to be set aside because, while staying the selection process in respect of Group I and III posts, the learned Single Judge completely overlooked that the elements of irreparable injury, balance of convenience and public interest are against stalling the process of recruitment, which the University had undertaken in compliance of the order passed by the learned Single Judge in Writ Petition No.8664 of 1998 and batch and the direction given by the Division Bench in Writ Appeal No.244 of 2005. Learned counsel submitted that the grievance made by the respondents in the

matter of alleged deprivation of their right to be considered for appointment against the reserved vacancies in the particular faculties is misconceived because the appellant had notified the roster points in terms of the approval granted by the Social Welfare Department of the Government of Andhra Pradesh.

Sri Bhattacharjee then argued that even if the learned Single Judge felt that the issue raised by the writ petitioners merits detailed consideration and adjudication, there could be no justification for stultifying the entire process of selection against 163 posts, more so when the interest of the writ petitioners has been amply protected by the ad interim orders.

S/Sri K. Balagopal and K.S. Murthy, learned counsel for the respondents argued that the advertisement issued by the University is liable to be quashed because the roster points indicated therein are ex facie erroneous. They emphasised that the roster point should start at 83 whereas the impugned recruitment is being made on the premise that the roster point starts at 89 and argued that if the appellants are allowed to make selection, the same will jeopardize the career of the respondents and other eligible candidates. Both the learned counsel submitted that the Division Bench may not interfere with the discretion exercised by the learned Single Judge because in last nine years, the appellant University has successfully carried on the teaching work by engaging teachers on contract basis. Sri Murthy pointed out that the learned Single Judge has already fixed the main petitions for final hearing on 6-6-2007 and, therefore, there is no likelihood of any injury being caused to the appellants or the students because, at present, the University is closed for summer vacation.

We have given serious thought to the entire matter. In our opinion, the order impugned in these appeals is liable to be set aside

because, while staying the selection process in respect of Group I and Group III posts, the learned Single Judge ignored the vital parameters, which must be satisfied for exercise of discretion in such matters.

The admission of the writ petitions or issue of notice to the non-petitioners (including the appellant herein) can, at best, be treated as indicative of the existence of prima facie case in favour of the respondents. However, this by itself is not sufficient for passing an order, which has the effect of stultifying the entire process of selection initiated by the appellant for recruitment of 90 Assistant Professors in Group I and III because the other three factors i.e. irreparable injury, balance of convenience and public interest, which are required to be kept in mind for passing an interim order in such matters, are clearly against the grant of stay.

If the writ petitions filed by the respondents are allowed, the Court may strike down the advertisement and direct the respondents to re-advertise the posts of Assistant Professors in Group I, II and III. In that event, the writ petitioners may become entitled to be considered for recruitment against the reserved posts in the faculties of their choice. However, their ultimate selection and appointment would always lie in the realm of speculation. The recommendation, if any made by the selection committee in their favour will require approval of the Executive Council of the University. The latter may, for good and sufficient reasons to be recorded in writing, decline to approve the recommendations and remit the matter to the selection committee for fresh consideration. If the names of the respondents do not figure in the merit list prepared by the selection committee, they can represent their cause to the Executive Council and point out that the roster points indicated in the advertisement are not correct. However, by virtue of the stay granted by the learned Single Judge, the process of selection

initiated pursuant to the mandatory direction given by this Court has been stalled and as a result of that, the appellant University has been prevented from making regular appointment against the vacant posts sanctioned by the State Government and all those who have applied for recruitment have been deprived of their legitimate expectation of being selected and appointed in different faculties. It is, thus, evident that the elements of balance of convenience and irreparable injury are clearly against staying of the process of selection.

We are further of the view that in matters relating to selection, appointment, confirmation, promotion, seniority and disciplinary action taken by the employer, the Court should be extremely loath to exercise its discretion under Article 226 of the Constitution to pass an interlocutory order, which has the effect of stultifying the process or action initiated by the competent authority/body. If the process of recruitment or promotion is stalled, unknown numbers of eligible candidates are deprived of their right to be considered, which is guaranteed under Articles 14 and 16 of the Constitution. If the exercise undertaken by the employer for confirmation of the employees or fixation of their seniority is injuncted by the Court, all the members of service are adversely affected. In such cases, the Court cannot, in the event of dismissal of the main petition, remedy the wrong done to such persons. While the Court can direct grant of effective relief to the petitioner and also compensate him/her for the loss suffered on account of illegal or erroneous action taken by the competent authority, no such relief can be granted to the respondents or other affected persons who may not even be parties to the writ petition.

In **Ranbir Chandra v. Union of India**[1], a Division Bench of the Delhi High Court considered the question whether the High Court can, in exercise of power under Article 226 of the Constitution of India, pass

an interim order which has the effect of stultifying the appointment of an eligible person. While vacating the stay granted by the learned Single Judge, the Division Bench made lucid enunciation of law on the issues of irreparable injury and balance of convenience. Paragraphs 11 and 13 of that judgment, which are worth noticing, read as under:

> "11. No direct injury, much less an irreparable one could be shown to be caused to any of the persons filing the writ petition by the impugned order. The said order enabled the Government to appoint the appellant to the post of a Commissioner of Income-tax. Whether any of the persons filing the writ petition would be affected by it is doubtful. The promotion of the post of Income-tax Commissioner is by selection and on merit. The refixation of seniority of the appellant which placed him above some persons previously above him does not mean that by the mere gain in seniority the appellant was entitled to be appointed as a Commissioner of Income-tax. The appointment could be made only by selection. It is not known which and if so how many of the persons filing the writ petition would be selected for appointment to the post of a Commissioner of Income-tax. They could only urge that the appellant was made senior to them. They could not urge, however, that selection was made on the basis of seniority. Assuming that some of the persons filing the writ petition would also be selected as Commissioners of I.T. and would be junior to the appellant because of the earlier promotion of the appellant based on the impugned order, it cannot be said that this would be the result of the impugned order. On the contrary, it would be the result of the eligibility of the appellant to be considered for selection. That eligibility was given to him sheerly by considerations of justice. The first principle in entertaining a writ petition and in granting relief is to redress injustice and to advance the cause of justice. The facts are such that injustice had been done to the appellant. The redressing of such injustice was not meant to harm the interests of others. At any rate, it cannot be said to cause any injustice to the writ petitioners. The extraordinary powers of this court under Art.226 should not be exercised unless

considerations of justice demanded (See **Vashist Bhargava v. Income-tax Officer, Salary Circle**, ILR (1975) I Delhi 634, and the following decisions of the Supreme Court relied upon therein namely, **A. M. Alison v. B. L. Sen** AIR 1957 SC 227 Paras 16 and 17, **State of U. P. v. Dr. Vijay Anand Maharaj**, (1963) I SCR 1 at 17, **Veerappa v. Raman**, (1952) SCR 583 at 594, **D. N. Banerjee v. P. R. Mukherjee** (1953) SCR 302 at 305 **Sangram Singh v. Election Tribunal** (1955) 2 SCR 1 (6) at 8, and **Durga Prasad v. The Chief Controller of Imports and Exports**, AIR 1970 S. C. 769.

13. It is the general rule in writ petitions filed by civil servants that the impugned administrative action of the Government is set aside if the writ petition succeeds. The balance of convenience is in favour of not suspending the operation of the Government order. For, the individual writ petitioner can always be given the appropriate relief if his writ petition succeeds. The Government is a Government of law. It always implements the decisions of the courts giving such reliefs to the writ petitioners. But it is extremely unusual for this Court to stop the operation of the Government order merely because the writ petition seems to make out a prima facie case. There are various considerations against such a course. Since ordinarily it is the business of the Government and the Union Public Service Commission to go into the facts of a particular case of a civil servant, their examination of facts and decision to do justice in such a case is not ordinarily interfered with by this court. The issue of a stay against the Government order obstructs the functioning of the Government. Such obstructions should be avoided initially, unless it becomes inevitable when the writ petition is disposed of on merits. Rights of third parties also get prejudiced by premature stay suspending the operation of administrative action for which no compensation can be available or sufficient. It is, therefore, only in an extraordinary case that stay is granted in a writ petition by the civil servant against the Government. For instance if the order of the Government is unjust or mala fide then considerations of justice may justify the grant of stay. In the present case, the impugned order is not said to be either unjust or mala fide. There is no reason, therefore, for departing

from the usual practice of not granting stay in such a case. It is because we were impressed by the justice of the case of the appellant and no extraordinary circumstances were present to justify the suspension of the operation of the order dated 22nd July, 1977, that we thought that the stay was operating unjustly against the appellant since the appellant has only a few years to serve and it would be unjust to delay his promotion which he has got after so many years of representation, we allowed the appeal by a brief order on 13th January, 1978 and set aside the stay. But to minimise any hardship to the writ petitioners, we have advanced the date of hearing of the writ petition by the learned single judge to 15th February, 1978."

In **Narayan v. R. Vaidyanath**[2], a learned Single Judge of the Karnataka High Court, while vacating the order of injunction passed by the trial court in the matter of appointment on the post of Reader in Political Science, observed as under:

"10. I also do not see how the balance of convenience lies in issuing an order of interim injunction restraining defendant 3 from assuming charge of the post of Reader in Political Science in the University. He is not going to displace the plaintiff since the plaintiff is not holding that post. If the plaintiff succeeds, defendant 3 will have to vacate the post and a fresh appointment will have to be made. The litigation may take several years before it is finally concluded. Is any Court justified in keeping the post of a Reader in the University vacant by issuing an order of injunction and thereby making the students suffer? In writ petitions under Art.226 of the Constitution where appointments made by the Governments, Universities, local bodies etc., are challenged, this Court, to my knowledge, has not issued interim order restraining the candidates appointed from assuming charges of the posts to which they were appointed unless it be a case where by such appointment, the petitioner is going to be displaced. If this Court in exercise of its discretion under Article 226 of the Constitution will not issue an interim order of the nature prayed

for by the plaintiff, is a subordinate Court justified in making the order under revision?"

We are in complete agreement with the views expressed by the Division Bench of the Delhi High Court and the learned Single Judge of the Karnataka High Court and hold that the learned Single Judge committed a serious error by staying the process of selection in respect of Group I and III posts.

A reading of the order under challenge shows that while staying the process of selection, the learned Single Judge did not even advert to the issues of irreparable injury, balance of convenience and public interest and accepted the spacious assertion made on behalf of the writ petitioners that if the selection is allowed to be held, third parties interest would creep in and chaotic situation will prevail.

In our considered view, the recommendations made by the selection committee and appointments, if any made by the University will not cause any injury, much less an irreparable injury to the writ petitioners and the mere fact that they may have to implead the selected candidates as parties to the writ petition cannot justify a wholesale stay of the recruitment process. If the writ petitions are ultimately allowed, the Court may give appropriate relief to the petitioners and settle the equities, but interlocutory intervention, which has the effect of putting the process of selection in abeyance, is not at all warranted, more so because the respondents have an opportunity to represent their grievance before the Executive Council which, as mentioned above, is required to approve the recommendations made by the selection committee.

In the result, the appeals are allowed. The order of the learned Single Judge is set aside. However, it is made clear that this judgment shall not affect the ad interim orders passed earlier for protecting the

rights/interests of the respondents.

As a sequel to the disposal of the appeals in the manner indicated above, all the miscellaneous applications are disposed of as infructuous.

G.S. SINGHVI, CJ

5th June, 2007

C.V. NAGARJUNA REDDY, J

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[1] 1978 (2) SLR 340

[2] AIR 1975 Karnataka 117